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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE STATE OF ALASKA
IN ANCHORAGE

ELIAS HUNSINGER

Plaintiff,

v.

CASE NO.

DALE WADDELL AND KIM WADDELL,
husband and wife and the marital community
comprised thereof

Defendants.

COMPLAINT

I. PARTIES AND PROPERTY

1. Plaintiff Elias Hunsinger is an individual and a citizen of the state of Oregon. At all times material hereto, Plaintiff was employed in Alaska by defendants Dave and Kim Waddell as a deckhand aboard the fishing vessel NERKA (the "Vessel").

2. Defendant Dave and Kim Waddell (collectively "Defendants") are citizens of Longview, Cowlitz County, Washington and the owners of the Vessel.

3. The Vessel is licensed in Alaska and operates as a commercial gillnet fishing vessel in the navigable waters of Bristol Bay during the Bristol Bay sockeye salmon season.

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7 5. Plaintiff was employed as a deckhand aboard the Vessel during the 2018 Bristol
8 Bay sockeye salmon season.

6. The Vessel operates by deploying a gillnet off the stern of the Vessel. When the time comes to retrieve the net, it is brought back aboard the Vessel by means of a hydraulically driven drum that reels in the net. The drum is manually operated by means of a lever which activates the drum.

7. The drum is equipped with a mechanism known as a “level wind” which is designed to spread the net evenly across the drum as the net is reeled in. The level wind employs a fairlead which is situated in a frame. The level wind frame is fixed in place while the fairlead is in operation. The fairlead moves back and forth within the frame evenly distributing the net across the drum. The drum and the level wind operate together as a unit. Activating the drum also activates the level wind.

19 8. On or about July 6, 2018, Plaintiff was working on the deck of the Vessel as it
20 was engaged in fishing. Plaintiff was clearing the net of fish as it was brought aboard.

21 Defendant Dave Waddell was operating the drum and level wind.

22 9. The level wind mechanism aboard the Vessel was faulty in that the frame which
23 held the fairlead was not properly bolted in place. To hold the level wind in place while in
24 operation, Defendants had secured it in place with a bungee cord.

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1 10. During the retrieval of the net, the bungee cord failed to hold the level wind frame
2 in place and it “popped up”. Plaintiff attempted to push it back into place with his hands but in
3 so doing, the fourth finger of his right hand became caught by the moving fairlead fracturing the
4 bone and tearing off the end of his finger.

5 11. Plaintiff was able to pull his hand free of the machine but suffered a partial
6 amputation of the middle finger of his right hand.

7 12. Plaintiff was transported to the local clinic in Naknek where medics assessed his
8 injury and indicated that it was likely that he would need surgery which could not be done in
9 Naknek.

10 13. Plaintiff returned to his home in Astoria, Oregon and was examined by an
11 emergency room physician who performed a surgical repair of the laceration.

12 14. The surgery was successful. However, in the weeks following the surgery,
13 Plaintiff began to experience swelling, extreme pain and tingling in the hand suffering the injury
14 due to post-injury neuritis which effects are ongoing and which materially interfere with
15 Plaintiff’s normal activities.

16 15. As a result of the injury to his finger and the neuritis caused by the injury,
17 Plaintiff was unable to fully perform the duties associated with his employment with a
18 corresponding loss of income.

19 **III. FIRST CAUSE OF ACTION: JONES ACT NEGLIGENCE**
20

21 16. Plaintiff re-alleges and incorporates paragraphs 1-15 as though again set forth
22 herein.

23 17. Under the Jones Act, an employer has duties to seamen, *inter alia*, to provide a
24 reasonably safe place to work.

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18. Defendants had a duty to provide Plaintiff with a safe place to work.

19. Defendants breached that duty by not properly maintaining the level wind aboard the Vessel and by operating it in an unsafe manner.

20. As a result of Defendants' failure to provide Plaintiff with a safe place to work, Defendants are liable for the injuries suffered by Plaintiff in an amount to be proven at trial.

IV. UNSEAWORTHINESS

21. Plaintiff re-alleges and incorporates paragraphs 1-20 as though again set forth herein.

22. Ship owners and operators are required to provide crewmembers with a seaworthy vessel. Defendants owed Plaintiff a duty to provide a seaworthy vessel.

23. Defendants breached that duty in the following respects, each of which is independently sufficient to establish that an unsafe and unseaworthy condition existed aboard the Vessel at the time of Plaintiff's injury:

- (a) Failure to provide a safe workplace;
- (b) Failure to properly maintain the level wind;
- (c) Operating the level wind in an unsafe condition;
- (d) In such other respects as may be demonstrated at trial.

24. As a direct and proximate result of Defendants' failure to provide a seaworthy vessel, Plaintiff suffered injuries in an amount to be proven at trial.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Elias Hunsinger seeks judgment against Defendants, and each of them, as follows:

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1 1. For Plaintiff's damages resulting from his injury including, but not limited to, lost
2 income, loss of mobility, permanent disability, loss of capacity for enjoyment of life, pain and
3 suffering and such other damages as may be proven at trial;

4 2. For prejudgment interest at the maximum rate permitted by law from the date of
5 Plaintiff's injury until judgment is entered.

6 3. For Plaintiff's costs and attorney's fees;

7 4. For permission to amend his pleadings to conform to proof at trial;

8 For such other and further relief as the court may find just and equitable.

9 DATED this 11th day of June, 2020 .

10 s/ John G. Young

11 John G. Young, SBN #8308084

12 Attorneys for Plaintiff Elias Hunsinger

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